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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 259

H. CLYDE REEVES, Commissioner of Revenue of the Commonwealth of Kentucky,

Appellant,

vs.

BEN WILLIAMSON, JR., Trustee of the Kentucky Fuel Gas Corporation.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

STATEMENT AS TO JURISDICTION.

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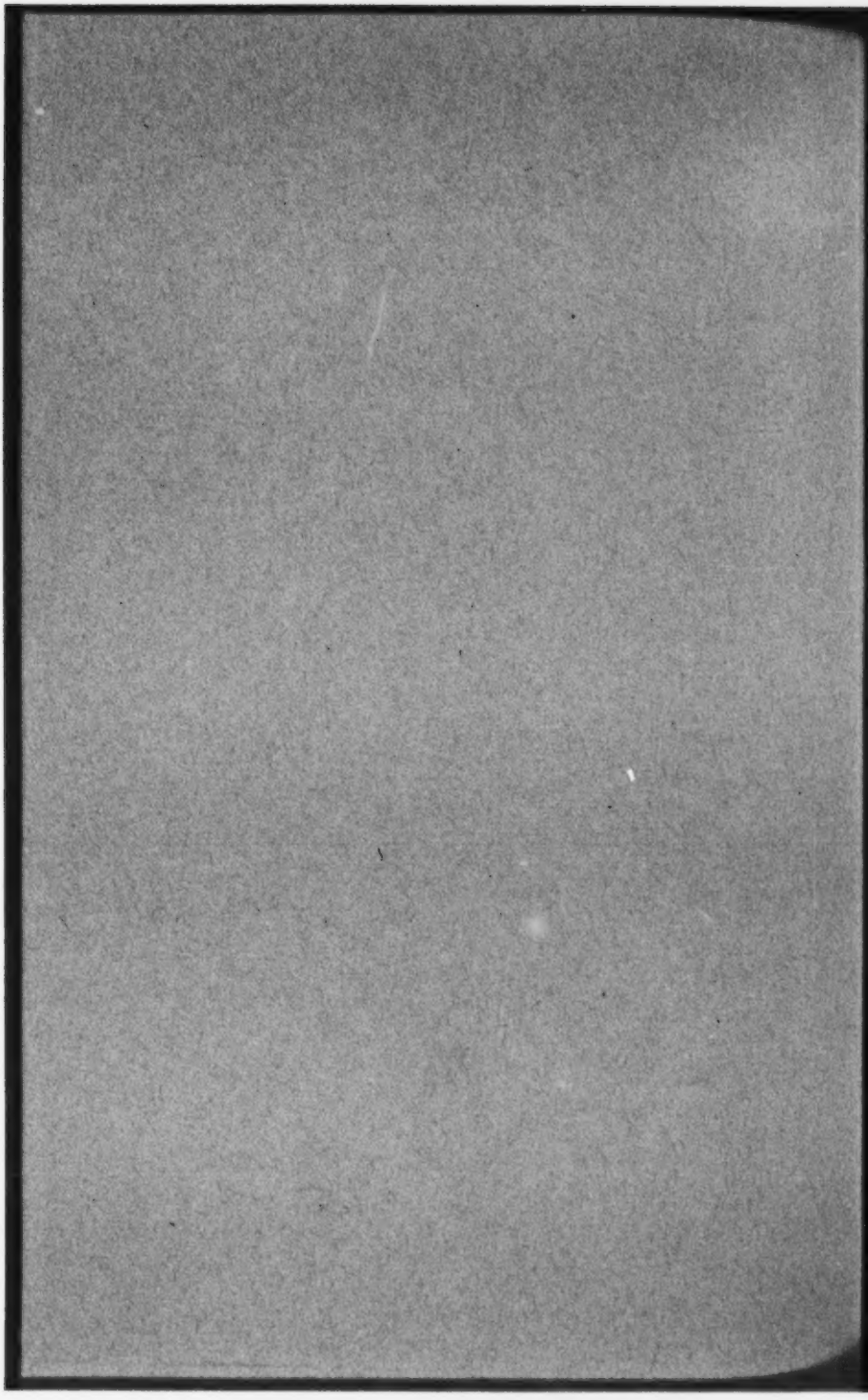

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H. CLYDE REEVES, Commissioner of Revenue of the Commonwealth of Kentucky,

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vs.

BEN WILLIAMSON, JR., Trustee of the Kentucky Fuel Gas Corporation.

STATEMENT AS TO JURISDICTION.

(Filed July 7, 1942.)

The jurisdiction of the Supreme Court of the United States upon appeal is invoked under section 240 of the Judicial Code as amended by the act of February 13, 1925, c. 299, Section 1 (43 stat. 938) (United States Code Ann., Title 28 Section 347(b)). The final decree of the United States Circuit Court of Appeals, Sixth Circuit, was entered April 17th, 1942. Application for appeal is herewith presented on the 3d day of July, 1942.

The Statute of the State of Kentucky, the validity of which is involved, is Chap. 148 of the 1934 Acts of the General Assembly of Kentucky, and which is section 4019, Carroll's Kentucky Statutes, Baldwin's 1938 Supplement. Said Statute reads:

> Annual taxes.—An annual ad valorem tax for state purposes of five (five) cents each one hundred dollars (one hundred dollars) of value of all real estate directed to be assessed for taxation, as provided by law and fifty cents upon each one hundred dollars (one hundred dollars) of value of all other property directed to be assessed for taxation, as provided by law, shall be paid by the owner, person or corporation assessed; except a tax at the rate of one-tenth of one per cent (one-tenth of one per cent) shall be paid annually upon the amount of deposits in any bank, trust company, or combined bank and trust company, organized under the laws of this State, or in any national bank of this State, as now provided by law; and also including building and loan associations incorporated under the laws of this State, and making loans to members only, which association assessed except as otherwise provided by law in the manner and at the rate now set forth in Chapter fourteen of the Acts of the extraordinary session of the general assembly of nineteen seventeen (Sections four thousand nineteen a-six, four thousand nineteen a-seven, and four thousand nineteen a-eight).
>
> The aggregate amount of taxes realized under this Act shall be paid into the State Treasury and credited to the General Fund to be distributed and applied as may be provided by law.

The Kentucky Fuel Gas Corporation, a Delaware Corporation, did business in the Commonwealth of Kentucky during the calendar year 1938 operating under the trusteeship of Ben Williamson, Jr., who was duly appointed in bankruptcy action No. 991-B in the United States District Court for the Eastern District of Kentucky.

During the calendar year of 1938 the Corporation held and owned $275,000 in Postal Savings Deposits. Under the provisions of Section 4077, Kentucky Statutes, Baldwin's 1938 Supplement, all of the property of said taxpayer was assessed by the Kentucky Tax Commission. Under pertinent provisions of the Kentucky Statutes, it was the

duty of the appellant, H. Clyde Reeves as Commissioner of Revenue of the Commonwealth of Kentucky to collect all delinquent taxes owing the Commonwealth. The amount of taxes due on the $275,000 Postal Savings Certificates owned by the Kentucky Fuel Gas Corporation under the provisions of Section 4019, Kentucky Statutes, Baldwin's 1938 Supplement, was $1,375 with 10 per cent penalty as provided by Section *4091*, Kentucky Statutes.

The appellant, by his intervening petition, made claim for the amount of taxes, interest and penalties due to the Commonwealth of Kentucky in the bankruptcy proceedings in the district court, Eastern District of Kentucky, wherein he prayed judgment against Ben Williamson, Jr., as Trustee of the Kentucky Fuel Gas Corporation for the Commonwealth's claim. The District Court disallowed the appellant's claim for taxes based on the provisions of section 4019 Kentucky Statutes, Baldwin's 1938 Supplement:

> 1. for reason that Postal Savings Certificates are exempt from state and other local taxes by the provisions of Section 3701 of the revised statutes of the United States (31 U. S. C. A. Section 742);
>
> 2. for reason that the Postal Savings Certificates are exempt from taxation under the Constitution of the United States in that the Postal Savings System is a governmental financing agent; and
>
> 3. for reason that the 50 per cent rate per hundred dollars provided for in Section 4019, Kentucky Statutes, Baldwin's 1938 Supplement, constituted an unconstitutional discrimination against a governmental agency by which an unconstitutional burden was placed on its operations.

On appeal to the Circuit Court of Appeals, Sixth Circuit, that court held that Section 4019 Kentucky Statutes, Baldwin's 1938 Supplement, discriminated against the Postal

Savings Deposits and that therefore and by reason thereof said Kentucky's taxing statute was invalid as applied to Postal Savings Certificates.

The facts alleged, stipulated and admitted in the record leave no question for determination other than the question as to whether or not section 4019, Carroll's Kentucky Statutes, Baldwin's 1938 Supplement, is invalid when applied to the taxation of Postal Savings Certificates owned by a Kentucky taxpayer at the rate therein provided.

The appeal prayed for is to the Supreme Court of the United States from the final decree affirming the judgment of a District Court in dismissing the appellant's intervening petition, and is provided for by judicial code section 240 as amended by the Act of February 13, 1925, c. 299, Section 1 (43 stat. 938) (United States Code Ann., Title 28 Section 347(b)).

The cases believed to sustain the jurisdiction of the Supreme Court of the United States are:

New York v. *Latrobe,* 279 U. S. 421, 49 S. Ct. 377, 73 L. Ed. 776, 65 A. L. R. 1341;

Mayor, etc., of City of Natchez v. *McNeeley,* 275 U. S. 502, 48 S. Ct. 156, 72 L. Ed. 394;

City of Richmond v. *Deans,* 281 U. S. 704, 50 S. Ct. 407, 74 L. Ed. 1128;

Healy v. *Ratta,* 292 U. S. 263, 54 S. Ct. 700, 78 L. Ed. 1248.

Compare *Stratton* v. *St. Louis Southwestern R. Co.,* 282 U. S. 10, 51 S. Ct. 8, 75 L. Ed. 135.

Respectfully submitted,

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